IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10466 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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MAHTANI CHITOSAN PVT. LTD.,

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 10466 of 1998

M/S THAKKAR ASSOC. for Petitioner No. 1

MR MK DAGLI, AGP for Respondent No. 1-2

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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/09/2002

ORAL JUDGEMENT

#. The petitioner is a private limited company manufacturing the chemical product at Veraval. Since the petitioner was not in a position to obtain the

electricity supply from the Gujarat Electricity Board in view of some technical reasons for want of power feeder for industrial supply in the area, and, as, the Gujarat Electricity Board is unable to supply the electric power, the petitioner is required to run the machinery with the help of the generator, and, for that purpose, the say of the petitioner is that the petitioner is in need of minimum 300 liters diesel every day.

#. On 15.5.1997, the premises of the petitioner company was visited by the officer of the Civil Supply Department, and, at that time, certain irregularities were noticed by the department. It was found that the petitioner has not taken any permission for storing the diesel for more than 220 liters; that the petitioner has not obtained the licence for storage of the diesel under the Explosive Act from the Explosive Department. Accordingly, proceedings were initiated against the petitioner under the Essential Commodities Act and under the Ordinance of 1981 and the goods worth Rs.120040/- was seized by the department, which was released on getting the bank guarantee from the petitioner. Thereafter, by order at Annexure-A, which is at page 10 of the petition, the Collector, Junagadh, came to the conclusion that the petitioner has taken prior permission from the Gujarat Electricity Board, and, accordingly, is using the diesel. It is found by the Collector that, it is not necessary for the petitioner to obtain prior permission from the Mamlatdar under the provisions of the Essential Commodities Act and Ordinance. It is, however, found that, if the quantity in question is stored, and, if the same is in excess of 2500 liters, the petitioner is required to take licence from the Explosive Department, and, storing of the said diesel without such licence is not proper. The Collector, accordingly, by his order dated 26.9.1997 released the seized goods. However, it is observed in the order that the separate proceedings may be taken under the Petroleum Act, 1934. Subsequently, the petitioner was served with the notice dated 24.6.1998, which was issued by the same Collector on the ground that the petitioner is storing the diesel having quantity of more than 2500 liters in its storage tank without obtaining the licence under the Petroleum Act, 1934, and, therefore, the petitioner was asked to show cause as to why the proceedings should not be taken under section 23(c) of the Petroleum Act, 1934. The said show cause notice is at page 15 - Annexure-B to the petition. The said notice was replied by the petitioner by giving the detailed reply. It is pointed out that the petitioner is not doing any business of selling or purchasing of the diesel. It is also pointed out that,

whatever may be the mistake on the part of the petitioner, the same was through oversight and merely a technical mistake, which is of a technical nature. It is also pointed out that, the notice issued to the petitioner was under section 23(c) of the Petroleum Act, which was issued after a period of one year from the earlier order of the Collector. In para 5 of the reply, the petitioner has pointed out that the petitioner has already applied to the Controller of Explosive, Nagpur for giving the licence for storing the diesel and such application is given on 16.6.1997. It is accordingly prayed that, the notice issued against the petitioner may be discharged. Thereafter, the Collector passed the order, which is at Annexure-D to the petition - page 24. It was ordered that the prosecution may be lodged against the petitioner under section 23 (c) of the Petroleum Act, 1934. The petitioner has challenged the said order of the District Magistrate, Junagadh by way of preferring this petition.

#. At the time of filing this petition, this Court (Coram: S.K.Keshote,J) passed the following order on 21.1.1999.:

"Admit.

In view of the fact that Shri Samir Dave put appearance for respondent, office needs not to issue notice to respondent and the undertaking furnished by the learned counsel for the petitioner that the petitioner shall not store more than 2500 liters at the premises, interim relief in terms of para 13(B) is granted."

#. At the time of hearing of this petition, it is submitted by Mr.Pahwa that, after filing of this petition, the petitioner is already given NOC by the Additional District Magistrate, Junagadh under Rule 144 of the Petroleum Rules. In the said NOC, it is clearly mentioned that, there is no objection for granting the licence for storing of petroleum Class "B" H.S.D.12-K.L. under the Petroleum Act and the Rules to the present petitioner. It is also mentioned in the said certificate that, no objection certificate is issued under the Petroleum Act, 1934 and Rule 144 of the Petroleum Rules, 1976. At the time of hearing of this petition, the said certificate is produced on record by Mr.Pahwa and the copy thereof is also given to Mr.Dagli, learned AGP. It is submitted by Mr.Pahwa that, the petitioner has already applied for necessary licence as back as in 1997, therefore, the order of the District Magistrate to

initiate the proceedings is not just and proper. Mr.Pahwa further submitted that, even otherwise, in the earlier proceedings, the Collector found that the petitioner was storing the diesel in question after taking prior permission from the Gujarat Electricity Board for the purpose of running its machinery through the generator, it seems that, initiation of the proceedings under section 23(c) of the Petroleum Act after a period of one year from the date of original order is arbitrary as the same District Magistrate, who was having the powers of the Collector at the relevant time, had passed the order about one year back at the time of entertaining the proceedings under the Essential Commodities Act. He further submitted that, even otherwise, section 23(c) of the Petroleum Act, 1934 is not applicable as according to him, the provision of section 23(c) of the Act is misapplied to the facts of the present case.

#. After hearing Mr.Pahwa and Mr.M.K.Dagli, learned AGP, in my view, it will not be just and proper to allow the authority after such a long time to initiate the proceedings under section 23(c) of the Petroleum Act, 1934. It is not in dispute that, the case against the petitioner is that, the petitioner is storing the quantity of diesel, which is in excess of 2500 liters, without getting any prior permission for the purpose of storing the diesel from the Explosive Department. It is submitted by Mr.Pahwa that, since the petitioner was not holding any licence for storing the diesel at the relevant time, initiation of the proceedings under section 23(c) of the Petroleum Act is not maintainable as there is no breach of the said provision, and, therefore, the order in question suffers from nonapplication of mind.

#. It is also required to be noted that, there is no prima facie material on record to suggest as to how much the quantity of diesel was stored by the petitioner. Mr.Pahwa has fairly submitted that the petitioner was storing the diesel quantity upto 2500 liters. Over and above the said facts, the petitioner has been given the licence for storing the diesel in the year 1998, as indicated above, and prior to that, as back as in 1997, the petitioner has already applied for licence from the Explosive Department.

#. Considering the aforesaid aspect of the matter and considering the fact that, now considerable time has passed, and, it is submitted by Mr.Pahwa that, even if for the purpose of storing the diesel, the licence from

any other authority is required, all efforts will be made to see that, such licence is obtained and that till that has been done, the petitioner will not store the diesel for more than 2500 liters, and, the petitioner will, therefore, store the diesel only upto the permissible limits as per the Act and the Rules, in my view, the impugned order passed by the Collector is required to be quashed and set aside. Considering the totality of the facts and circumstances of the case as indicated above, the impugned order at Annexure-D is quashed and set aside. It is, however, clarified that, if there is any breach after the aforesaid order of the Collector, the same is required to be dealt with on its own merits.

#. Accordingly, this petition is allowed. The order of the Collector at Annexure-D is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

(P.B.Majmudar,J)
(pathan)